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IN THE

Supreme Court of the United States

CITY OF WINTER HAVEN, et al,

Petitioners,

vs.

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

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PETITION FOR WRIT OF CERTIORARI

This Petition for Certiorari to review the decision of the Circuit Court of Appeals dated March 10, 1944, 141 Fed. (2d) 348, is necessary because the Circuit Court of Appeals for the Fifth Circuit (a) did not adjudicate the questions of state law involved as directed by this Court in *Meredith* vs. *Winter Haven*, No. 42, October Term 1943; (b) held that it "found no settled constitutional law of Florida" which would determine the rights of the parties; and (c) decided the case in a way contrary to that in which the Florida Court has decided other cases involving the same question of law.

The Order of the lower court dismissing the Bill of Complaint was made by a Florida Federal Judge, who had formerly been a Circuit Judge of the State of Florida. All of the Judges of the Circuit Court of Appeals who participated in the decision are from states other than Florida.

STATEMENT OF THE CASE

Since the brief which we filed in this Court on the former hearing contained a complete statement of the facts, we shall not attempt to restate all of the facts, but only those which

are essential to show that the reasons given for this Petition are well founded.

In 1933, the City of Winter Haven issued two series of bonds called "General Refunding Bonds of 1933", Series A and Series B, totaling over $2,000,000. Series A was issued to refund bonds which bore interest at 6 percent; Series B to refund bonds which bore 5½ percent. Both series of bonds of 1933 bore interest at 3½ percent from date of issue to April 1, 1935, 4 percent from 1935 to 1936, 4½ percent from 1936 to 1937, and 5 percent from 1937 to 1943. Thereafter, Series A bears interest at 6 percent, and Series B at 5½ percent. To each bond there was attached what are called "deferred interest coupons". On Series A, these coupons are for the face value of $145. and on Series B, $95. According to their express terms, they are payable on the respective maturities of the bonds, and no bonds mature before April 1, 1948. The bonds of both issues contain a provision which authorizes the City to call them for payment before maturity; on any interest payment date on or prior to April 1, 1943 at par plus accrued interest, plus one-half of the "deferred interest coupon", and on any interest payment date from April 1, 1943 to April 1, 1953 at par plus accrued interest, plus three-fourths of the "deferred interest coupon". In 1940, the City undertook to issue new refunding bonds bearing interest at 4, 4¼ and 4½ percent, and to sell them for the purpose of calling the outstanding bonds. The new refunding bonds were validated and the old bonds were called for redemption on October 1, 1941, at par plus accrued interest at the current rate, making no provision for payment of any portion of the "deferred interest coupon", because of the decisions of the Supreme Court of Florida in *Andrews* vs. *Winter Haven*, 148 Fla. 144, 3 So. (2d) 805, and other cases, reference to which is hereafter made.

Plaintiffs instituted this action in the Federal Court under Title 28, Sec. 400, U. S. C. A., which authorizes federal

courts to enter judgments declaring the law applicable to an existing controversy between parties. The controversy which the plaintiff sought to have settled was the right of the City to call the bonds before April 1, 1943 without making available funds for the payment of one-half of the deferred interest coupon in addition to the accrued interest, and in the alternative, whether, if the obligation to pay a part of the "deferred interest coupon" as a condition to redemption was not enforcible, plaintiffs were entitled to collect from the City interest from the date of the bonds to the date of call at the rate borne by the bonds surrendered, less the amount of interest paid by the City to the plaintiffs on their present bonds.

An Amended Bill was filed, which prayed that the Court should determine whether a tender by the City of payment at par plus accrued interest without tendering a proportionate part of the deferred interest coupon would "toll the running of interest on the Refunding Bonds of 1933", and whether the holders of those bonds were required to accept such tender without receiving a part of the deferred interest coupon, and whether in the event the deferred interest coupons were held invalid, such invalidity also invalidated the call provision in the refunding contract.

A comparison of these prayers of the Complaint and Amended Complaint with the opinion of the Court of Appeals shows that none of these issues was decided.

GROUNDS FOR PETITION FOR THE WRIT

Application is hereby made to this Court for a Writ of Certiorari to review the decision of the Circuit Court of Appeals for the Fifth Circuit dated March 10, 1944, reversing the decree of the District Court for the Southern District of Florida dismissing the Complaint, on the following grounds:

I.

The decision of the Circuit Court of Appeals for the Fifth Circuit dated March 10, 1944, did not adjudicate the question of law which the Complaint prayed that the Court determine, namely, whether the call for redemption of the bonds was valid under the law of Florida.

A. The only statements in the opinion of the Circuit Court of Appeals which can be considered as deciding any point involved in the case are

1. That aside from the *Andrews* case, it

"found no settled constitutional law established in Florida which would condemn these bonds as refunding bonds, or which would invalidate the postponement of payment of part of the old interest rate by the plan of deferred coupon".

2. That

"payment of part of the deferred interest being plainly a consideration for the bondholders agreeing to the call provision, *we do not see how* the one can be severed from the other, so as to sustain the call before maturity without paying part of the deferred interest".

3. That the Court was

"not sure the *Andrews* case required it to hold otherwise."

or that the *Andrews* case

"controlled this case".

4. "But if it (the *Andrews* case) does"

and

"if the *Andrews* case requires us to hold that the part of the call provision which requires one-half of the deferred interest to be paid is severable and unenforcible",

plaintiffs under Sec. 20 of the Resolution

"are entitled to assume the position of holders of a like amount of indebtedness provided to be refunded",

and that plaintiffs have a claim against the City for the amount that would have been otherwise recoverable under the call provision.

Since the quoted portions of the opinion show that the Court did not determine or decide whether the *Andrews* case controlled the decision of this case or not, and since the Court said that it had "found no settled constitutional law" in other cases which should control, it did not decide the question of law which the Complaint was brought to decide, and which this Court ordered it to decide according to the law of Florida, that is, whether the call for redemption on October 1, 1941, without making provision for payment of any portion of the deferred interest coupon, tolled the interest after the call date, and whether the call was made in accordance with applicable law.

The District Judge will not be able to determine from the opinion whether, as the Complaint seeks to ascertain, the City should pay interest on the called bonds since the date of call or not, and this must be decided before a Declaratory Judgment can be entered determining the rights of the plaintiff under the Complaint. This was the prime purpose of the Complaint, and is the question of state law which this Court said should be decided.

B. The opinion as a whole may be construed as implying that the Court "did not see" why it should hold otherwise than it did, regardless of whether the *Andrews* case was controlling or not, because it apparently assumed that the amount of money to be paid by the City under the concluding paragraph of the opinion was the same, but it failed to consider the fact that the decision of the validity of the call was essential to the determination of all rights of the parties.

II.

Because the Court "found no settled constitutional law of Florida" that would permit the City to call the bonds on or before April 1, 1943 without paying any portion of the deferred interest coupons. This holding of the Court rests solely upon its assumption that the cases to which it refers can be distinguished from the present case, but it did not seem to realize that in all of the cases referred to, the Florida Supreme Court held that the political subdivision debtors could call their bonds for redemption before maturity without being legally required to pay any portion of the deferred interest coupon, and that this is a rule of law of the State of Florida, established by those cases. The effect of the decision of the Circuit Court of Appeals is that the City of Winter Haven must pay a portion of its deferred coupons, even though the debtors whose cases were decided by the Florida Court were not required to pay any portion of the deferred interest coupons on their bonds.

The *Andrews* case alone is sufficient to control the decision of this case, because it involved bonds of the same issue as those of the plaintiff, and the Circuit Court of Appeals admits that the decision of the Florida Supreme Court "must be taken as deliberate". The opinion of the Florida Court in the *Andrews* case expressly rests decision upon the law which it had previously announced in *Outman* vs. *Cone*, 141 Fla. 196, 192 So. 611; *Taylor* vs. *Williams*, 142 Fla. 402, 195 So. 175, and *State* vs. *Spec. Tax School District No. 3*, 143 Fla. 557, 197 So. 127. Since the *Andrews* case was decided, the Supreme Court of Florida has again followed and applied the same rule to the bonds of the City of New Smyrna, where the provisions for call were identical with those contained in the bonds of the City of Winter Haven.

This Court in its previous opinion said that the ruling in the *Andrews* case must

> "be taken as controlling, unless it can be said with some assurance that the Florida Supreme Court will not follow it in the future"

and since the Florida Court has followed the *Andrews* case in the *New Smyrna Beach* case, where the provisions for call of the bonds are identical, there can be no assurance that the Florida Court would follow a different rule in the future.

In its decision in *Huddleston* vs. *Dwyer*, No. 628, decided May 15, 1944, this Court said that it was the duty of the Circuit Court of Appeals

> "as well as of the trial court, to ascertain and apply the state law where, as in this case, it controlled the decision," citing *Meredith* vs. *Winter Haven*, 320 U. S. 228.

The Circuit Court of Appeals should not have sought to avoid the effect of the decisions of the State Court by making distinctions, since under the rule, it should have rendered a decision in which the result to the City would be the same that it would have been had this case been tried in the State Courts of Florida.

III.

Because the decision of the Circuit Court of Appeals is contrary to the law of Florida as announced by the Supreme Court of that state in the cases of *Outman* vs. *Cone*, supra, *Taylor* vs. *Williams*, supra, *State* vs. *Spec. Tax School District*, supra, and *State* vs. *City of New Smyrna Beach*, 148 Fla. 482, 4 So. (2d) 660, in all of which the issuing subdivisions were expressly held to have the right to call their bonds for payment without paying any portion of the deferred interest coupon, and is also contrary to the decision of the Florida Supreme Court in *Andrews* vs. *Winter*

Haven, supra, holding that the City of Winter Haven had the right to call its bonds without the payment of any portion of the deferred interest coupons.

WHEREFORE your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket "No. 10402, W. J. Meredith, James G. Martin and A. R. Ohmart, Appellants, vs. City of Winter Haven, et al., Appellees", and that the said decree of the Circuit Court of Appeals may be reversed by this Honorable Court, and that Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

CITY OF WINTER HAVEN, et al,

By.....
GILES J. PATTERSON,

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